RAILROADS—DUTY TO KEEP LOOKOUT AT CROSSINGS—CONTRIBUTORY NEGLIGENCE—CROWLEY v. LOUISVILLE & NASHVILLE RY. CO., 55 S. W. 434 (Ky.).—Plaintiff, after waiting at a public crossing for a passenger train to go by, started across and was struck by an engine, of the approach of which she had no warning. The evidence showed that if those in charge of the engine had kept a proper lookout, her presence on the track might have been discovered and her injury averted. *Held*, she could recover, though guilty of contributory negligence herself in thus going on the track.

Notwithstanding the negligence on the part of the person injured he may recover, if the railway company, after such negligence occurred, could by the exercise of ordinary care, have discovered it in time to have avoided inflicting injury. *Donohue* v. *St. Louis, etc., Ry. Co.*, 28 Am. & Eng. R. R. cases 673; *Kelly* v. *Hannibal, etc., Ry. Co.*, 75 Mo. 138. When the negligence of the defendant is the proximate cause of the injury, and that of the plaintiff only remote, the plaintiff may recover. *Kerwhacker* v. *R. R. Co.*, 3 Ohio St. 172; *Morrissey* v. *Wiggins Ferry Co.*, 47 Mo. 521.

STATUTE OF FRAUDS—NEW AND INDEPENDENT CONTRACT—CONSIDERATION MOVING TO PROMISOR—MANETTI v. DOEGE, 62 N. N. Sup. 918.—Plaintiff was employed by a sub-contractor to build a foundation. During the progress of the work, plaintiff told defendant, the owner of the premises, that he was afraid he would not be paid by the sub-contractor, and intended to abandon the job, whereupon defendant said that he would pay him in case the sub-contractor did not do so. *Held*, that the defendant, in consideration of the benefit to him from uninterrupted work, made a new and independent contract with plaintiff, enforceable by plaintiff on completion of the work.

There is no doubt that this case is correct according to the New York rule, as stated in similar cases, but in many of the states this case would clearly come under the Statute of Frauds. This is shown in *Hooker* v. *Russell*, 67 Wis. 257, where the court said: "So long as the original debt remains payable by the debtor to his creditor, an agreement by any other party to pay is within the statute, no matter what was the consideration for the latter promise."

SURETYSHIP—REAPPOINTMENT OF PRINCIPAL—LIABILITY—FIDELITY AND DEPOSIT CO. OF MD. v. MOBILE COUNTY, 27 South. Rep. 386 (Ala.).—On June 22, 1897, plaintiff-in-error became surety to Mobile County for the faithful discharge of the tax collector's duties. Prior to that time the collector had failed to account for certain funds collected, but faithfully accounted for returns since that day. *Held*, surety is liable.

The fact that a tax collector has collected funds which he fails to account for on a day of adjustment raises a presumption that they will be paid on the next settlement day, hence, even though plaintiff-in-error became surety after the funds were actually misappropriated, it is still held liable for the embezzlement. *Bruce* v. *U. S.*, 21 U. S. 596.

TAXATION OF PERSONALTY—VALUATION—STATE v. HALLIDAY, 56 N E. 118 Ohio.—The Bell Telephone Co. leased hand telephones to an Ohio concern at $14 rental per year. The Bell Co. manufactured these instruments under a patent, and were taxed on them at the rate of $3.42 per instrument, 20 per cent. more than bare cost. The State Auditor directed the County Auditor to assess these instruments at their true value in money, on the basis of the income they produced to the owner, taking into account the value given by the patent right. On application for mandamus the court said, when a manufacturer leases an article made by him under a patent, for a valuable consideration, he should be taxed on its value, though that value be enhanced by a patent. Its true value is what it is worth to him, and the assessor must decide what that is by every fact that he knows bearing on the question.